IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO : 16823 of 1998

Between:

Durgappa, S/o Ramulu, 35 years,
R/o Hyderabad.

..... PETITIONER

AND

1 The Presiding Officer, Labour Court-I,
Hyderabad.
2 The Depot Manager, APSRTC,
Hyderabad Depot-I, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction or writ particularly one in the nature of writ of Certiorari and after calling for the records from the 1st Respondent in I.D.No.27/94, and quash the award dt.1-4-97 in so far as denying the continuity of service, back wages and attendant benefits and imposing conditions as illegal, arbitrary and unjust, and consequently direct the Respondent to pay the same.

Counsel for the Petitioner:MR.V.VISWANATHAM

Counsel for the Respondent No.1: GP for Labour

Counsel for Respondent No.2 : Sri V.T.M. Prasad

The Court made the following ORDER:

This writ petition is filed by the workman, being aggrieved by the Award, dated 01.04.1997, in I.D.No.27 of 1994 on the file of the Labour Court-I, Hyderabad, denying the continuity of service, back wages and attendant benefits.

According to the petitioner, he was appointed as a driver in the month of July 1983 and attached to APS RTC, Hyderabad-II depot. Subsequently, he was transferred to APS RTC, Hyderabad-I depot in 1985. Ever since his appointment, he has been discharging his duties to the utmost satisfaction of his superiors. While the matter stood thus, when he was operating a service on the route Hyderabad to Vijayawada, on 03.07.1992, after crossing Jagannayaka Tanda near Vallabpur at about 15.50 hours, he noticed an auto-rickshaw and slowed down the vehicle, blown horn to caution its driver. Suddenly, a boy of eight years came running from behind the auto and was trying to cross the road from left to right in a careless manner. Noticing the said situation, he applied brakes, however, the boy hit the bus and fell down and consequently died of the injuries, in the hospital. Based on the said incident/accident, he was issued with a charge sheet, dated 23.07.1992. A regular domestic enquiry was ordered and after completing the formalities, the petitioner was removed from service by an order, dated 16.03.1993, of the disciplinary authority. Aggrieved by the same, the petitioner filed an appeal before the Divisional Manager and the same was

also dismissed. Therefore, he raised an industrial dispute under Section 2 A (2) of the Industrial Disputes Act (for short 'the Act'), which was taken on file as I.D.No.27 of 1994 by the Labour Court-I, Hyderabad.

Before the Labour Court, though no oral evidence was let in by both the parties, on behalf of the petitioner-workman, Exs.W1 and W2 were marked and on behalf of the respondent-management, Exs.M1 to M13 were marked.

After appreciation of the entire evidence on record, the Labour Court came to the conclusion that it would be a cause of miscarriage of justice, if the petitioner is held responsible for the accident and found guilty and consequently it would be in the fitness of things, just and proper to allow the petition and set aside the order of removal. It directed the respondents to re-instate the petitioner into service, but without continuity of service and other attendant benefits. However, the past service was directed to be treated for the purpose of pensionary benefits. Aggrieved by the same, the present writ petition is filed.

Heard the learned counsel for the petitioner and the learned counsel for the respondents.

I have given my anxious consideration to the respective submissions made by the learned counsel on either side and perused the Award under challenge. At the outset, I am of the opinion that the Labour Court erred in not properly exercising the power under Section 11-A of the Act, while granting the relief to the petitioner, as he is entitled to in the given circumstances of the case. The Labour Court, in fact, in para 11 of its Award noted as under:

> " A perusal of its page No.5 i.e. of Ex.M3 shows that the 'Enquiry Officer' who was superintendent (Traffic) APSRTC Suryapet depot observed as :
>
> (Re-produced marked portion from page No.5 of Ex.M3)
>
> "Hence, this accident has happened due to the ignorance of the deceased boy, since he has crossed the road in an abrupt manner and hence the deceased boy is responsible for the occurrence of this accident to a major extant."

Having noticed thus, the Labour Court, while setting aside the order of removal, directed the fresh appointment of the petitioner, but denied the continuity of service, back wages and other attendant benefits, except for the purpose of counting the past service for pensionary benefits.

It is the case of the petitioner that in the 10 years of service, rendered by him before the accident, he had clean record of service, which is not disputed. In view of the service of the petitioner and the very submission made by the Traffic Superintendent, APS RTC, who conducted a preliminary enquiry into the matter, the labour Court ought to have taken a further lenient view and at least awarded the benefit of continuity of service without any back wages and other attendant benefits. Instead of that, the Labour Court directed fresh appointment of the petitioner. I am of the opinion that the Labour Court has grossly erred in not exercising its power vested under Section 11-A of the Act. Thus, the award passed by the Labour Court is modified to the following effect:

In the result, the respondents are directed to re-instate the petitioner into service with continuity of service, but without any back wages and other attendant benefits.

With the above modification, the writ petition is allowed. There shall be no order as to costs.

06.07.2005

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To

1 The Presiding Officer, Labour Court-I,
Hyderabad.
2 The Depot Manager, APSRTC,
Hyderabad Depot-I, Hyderabad.

3 2 CD copies

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